THE HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION No. 6985 OF 2000:

ORDER:

The petitioner is a small scale industry, extracting oil by crushing cotton seeds. This Writ Petition is filed, questioning the proceedings No.SE/OP/ADB/SAO/CRS/HT/D. No.9133/2000, dated 9-2-2000, issued by the Superintending Engineer, Operation Circle, AP TRANSCO, Adilabad, in which, the plea of the petitioner to treat the service of the unit as seasonal one for the purpose of charging electricity power, was negatived.

Initially in the year 1988, a H.T. agreement was entered into between the petitioner and Electricity Board as per the terms and condition of supply of Electrical energy, framed under the Electricity (Supply) Act, 1948, for the purpose of extending supply to the petitioner-Unit. Various terms and conditions of the agreement indicate that the agreement was entered into treating the petitioner-Unit as seasonal industry. As per Clause 13 of the agreement, seasonal period was mentioned from the months of November to June. In this writ petition, the only dispute is with regard to levy of charges on the petitioner-Unit for the billing months of July and August, 1999. If the unit is treated as seasonal industry, the demand charges and consumption charges differ from seasonal period to un-seasonal period. From the date of agreement entered into, for several years, the petitioner-Unit was treated as seasonal industry and charges were levied and collected accordingly, as applicable to the seasonal industry. But, however, when the bills were issued for the months of July and August, 1999, by applying the tariff, which is not applicable to the seasonal industry, the petitioner, earlier approached this Court and questioned the same in Writ Petition No. 23711 of 1999. By that time, the petitioner had paid half of the bill amount for the month of July, 1999. However, as the representation made by the petitioner was pending consideration, the learned Single Judge of this Court, by order dated 16-11-1999, disposed of the said Writ petition, directing the respondents to restore the supply on condition of depositing half of the demand raised in the bill

for the month of August, 1999, and, further directed the respondents to consider the representation of the petitioner and pass appropriate orders. Consequent to the directions of this Court in the earlier said Writ Petition, the present impugned order is passed.

It is stated in the impugned order, that the service extended to the petitioner-unit does come within the purview of seasonal industry, and, the seasonal tariff is not applicable. Further, it is mentioned, that as per clause 35 of the terms and conditions of supply, the Superintending Engineer is empowered to reclassify the service; as such, the service of the petitioner-unit is reclassified as H.T. Category-I and accordingly, directions are issued to pay the balance amount, amounting to Rs.66,356/- towards consumption charges for the months of July and August, 1999.

At the stage of admission, this Court has passed interim order, subject to condition of depositing half of the demanded amount and, it is stated, that the said amount is also deposited.

It is contended by Sri V.Ravindher Rao, the learned Counsel appearing for the petitioner that the agreement was entered in the year 1998, and, as supply was extended as per the terms and conditions of the agreement by treating the petitioner-Unit as seasonal industry, it is not open for the respondents to charge the petitioner-unit, for the months of July and August, 1999 treating as regular industry. It is submitted by the learned Counsel that though initially the agreement was entered into for a period of five years, basing on the said agreement only, without varying the terms and conditions of supply, the respondents have continued the supply by charging accordingly. In that view of the matter, unless the category of service is reclassified by issuing notice, the respondents unilaterally cannot charge the bills for the months of July and August,1999 treating the petitioner-Unit not as a seasonal industry.

On the other hand, it is submitted by the learned Standing Counsel appearing for the respondent-corporation, that the cotton-seed oil industry is not classified as

seasonal industry in the earlier proceedings or in B.P.Ms.No. 62, dated 28-11-1998; as such, in exercise of powers conferred under clause 35 of the terms and conditions of supply, the service of the petitioner-unit is reclassified.

In view of the rival contentions, the only question which is to be considered is, whether the charges levied in the bills on account of demand and consumption charges, for the months of July and August, 1998, are correct or not. It is not in dispute, that originally the agreement was entered into on 06-01-1988 to supply electrical energy to the petitioner-unit and the said agreement was entered as per the terms and conditions of supply, framed under the Electricity (Supply) Act 1948. A reading of the said agreement makes it very clear that the petitioner-unit is treated as seasonal industry. The respondents have notified seasonal and un-seasonal periods for the purpose of billing. Right from the year 1988, the charges were levied on the petitioner-unit treating the same as seasonal industry only. It is clearly admitted in the counter affidavit that though the period of five years is mentioned in the agreement entered into, but, however, the same agreement will be deemed to be continued so long service exists. Though, the respondents are empowered to reclassify the category as per the terms and conditions of supply, but,at no point of time, any order was passed, nor, communication was made to the petitioner, reclassifying the service of the petitioner. Once there is an agreement entered into and is in force, unless there is prior notice for reclassification as per the terms and conditions of supply, the respondents cannot unilaterally change the tariff in the bills issued for the months of July and August, 1999. Though, the matter is adjourned for couple of times to enable the respondents to produce records to show that any such order is passed, but, the learned Standing Counsel stated that there was no such order earlier to the impugned order, reclassifying the service of the petitioner-unit. Though, it is stated in the counter affidavit that after conducting inspection, the service of the petitioner-unit was reclassified, but the same appears to have been done only by passing the impugned order. Inasmuch as there was no reclassification prior to issue of bills for the months of July and August, 1999, there is no valid basis for charging the petitioner-industry without treating it as seasonal industry, contrary to the agreement entered into. Though the learned Counsel has referred to Clause 35 of the terms and conditions of supply, but, at no point of time, the said power was invoked, and, all through from the year 1988 onwards, the

petitioner industry was treated as seasonal industry and was charged accordingly. As such, the respondents have no authority to charge the petitioner-unit for the months of July and August, 1999, contrary to the terms and conditions of agreement entered into. On this short ground, the petitioner is entitle to the relief sought for in the Writ Petition. In that view of the matter, I dispose of the Writ Petition, directing the respondents to issue revised bills for the months of July and August, 1999, treating the petitioner-Unit as seasonal industry by applying the relevant tariff applicable to the seasonal industries, at that point of time and adjust the amounts which are already paid by the petitioner. If any amounts are paid by the petitioner in excess, after adjusting the bills, the same shall be refunded to the petitioner within a period of three months from the date of receipt of this order. However, it is made clear that this order will not have any bearing on the subsequent bills, which are issued charging the petitioner-unit after re-classification of category.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: -09 -2005.

Msnr.